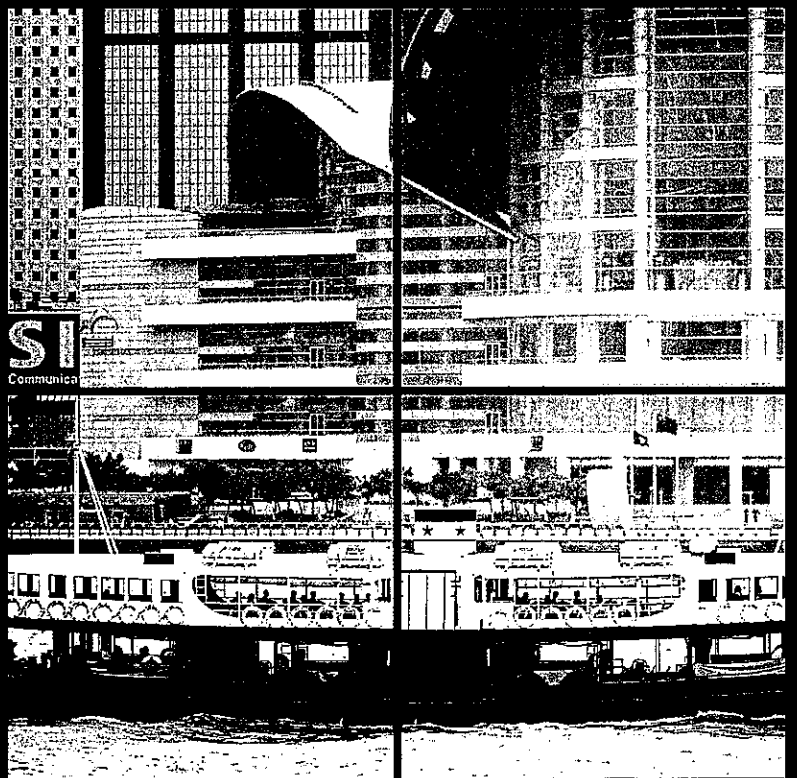




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業務通訊
QUARTERLY NEWSLETTER



專訪 **COMPASS INTERVIEW**
泛珠協議助港經濟振奮發展
"9+2" Agreement Helps Drive the
Promising Growth of the
Hong Kong Economy

透視 **INSIGHTS**
香港仲裁
Arbitration in Hong Kong

二〇〇五年 春季號
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中國法律將進出口貨物分為4類：一般進出口貨物、保稅貨物、減免稅貨物及暫時進口貨物。一般進出口貨物適用普通報關程序，包括申報、查驗、繳稅、提取貨品或裝運，貨物通關後可在國內自由流通。其餘3類則適用特別報關程序，包括前期、進出境及後續報關程序3部分。

The Chinese import and export laws and regulations classify goods into 4 categories: general goods, bonded goods, goods either exempted from duty and taxes or subject to reduced duty and tax rates, and goods temporarily imported. General goods are subject to the normal customs clearance formality: declaration, inspection, levy of taxes, delivery and release. General goods are freely circulated in the domestic market after completing the customs formality. The remaining 3 categories are subject to special customs formalities divided into 3 separate customs stages: pre-clearance stage, clearance stage, and post clearance stage.

中國進出口商品關稅措施

Tariff Measures on Import-Export of Commodities in the PRC

中國海關採用「交易價格」作為稅基，一般來說是經調整的商品到岸價。

In determining the base for the levy of tariff on imported goods, the Chinese customs adopts the practices of transacted price. Normally that is the CIF price.

稅關措施

進口關稅除關稅外，還包括增值稅及消費稅等國內稅，亦包括反傾銷稅、反補貼稅、保障措施關稅及報復性關稅等特別關稅。關稅稅則由商品目錄與稅率組成。中國法律按生產國將進口商品關稅稅率分為5種：最惠國稅率、協定稅率、特惠稅率、普通稅率及暫定稅率。

最惠國稅率適用於原產於世貿成員及與中國訂立最惠國條款的雙邊貿易協定國家/地區的貨物。

協定稅率低於最惠國稅率，適用於原產於中國訂立優惠條款區域性貿易協定(包括曼谷協定、中國分別與香港及澳門簽訂的「更緊密經貿關係安排」及與東盟國家的「框架協議」)的國家/地區的貨物。

Tariff Measures

Tariff is defined as the customs tariff (duty) and the internal taxes, such as VAT, consumption tax, and other levies. Import tariff also includes special duties of anti-dumping duty, countervailing duty, safeguard duty, and retaliatory duty. A tariff schedule consists of items of commodities and tariff rates. Depending on the country of origin, the Chinese law classifies goods or commodities subject to import tariff rates into 5 categories, namely the most-favored-nation (MFN) rate, treaty rate, special preferential rate, general rate, and temporary rate.

The MFN rates apply to goods originating from countries/regions who are WTO members, or those who have entered into bilateral trading agreement with China incorporating the MFN clause.

Treaty rates are used for goods originating from countries/regions that have entered into regional trade agreements (RTA) with China. Goods originating from RTA countries/regions enjoy a rate lower than the MFN rate. The RTAs include the Bangkok Agreement, the Closer Economic Partnership Arrangements

特惠稅率適用於原產於與中國簽訂特殊關稅優惠條款貿易協定的國家／地區的貨物。而對於非原產於適用最惠國稅率、協定稅率、特惠稅率的貨物，或原產地不明的進口貨物，一律適用最高的普通稅率。暫定稅率則只在特定期間生效。

同一貨物由不同原產地進入中國，適用不同稅率，如油漆及清漆，依照不同原產地，適用稅率為：

| | |
|-----------------------------------|------------|
| 原產地為香港稅率 CEPA-HK rate | 0% |
| 原產地為澳門稅率 CEPA-Macao rate | 0% |
| 特惠稅率 Special preferential rate | 不適用 N/A |
| 協定稅率 Treaty rate | 9% |
| 最惠國稅率 Preferential (MFN) rate | 10% |
| 普通稅率 General rate | 30% |

關稅稅基

中國海關採用「交易價格」作為稅基，一般來說是經調整的商品到岸價，其中包括：

1. 進口商支付的佣金；
2. 與商品不能分割的包裝容器；
3. 由進口商負擔的包裝費、研發費、設計費及相關費用；
4. 由進口商在商品入境後支付予外國供應商的特許權使用費、商品轉售費、處置費或使用費。

但不包括：

1. 對進口機械及設備的安裝、測試、維修訓練及技術服務等勞務收費；
2. 由進口港到目的地的運費及保險費；
3. 進口關稅及國內稅。

(CEPA) with Hong Kong and Macao respectively, and the Framework Agreement between China and ASEAN Countries.

Special preferential rates (SPR) apply to goods originating from countries/regions that have concluded treaty with China incorporating special tariff preferential treatment clauses. Goods, to which preferential rate, treaty rate, and special preferential rates are not applicable or whose country of origin is unknown, are subject to the general rate, which is the highest of all. Temporary rates only apply within a definite timeframe.

The import tariff rates under different tariff schedules are adopted depending on the country/region of origin for the goods exported to China. For example, paints and vanishes are subject to tariff rates as below:

Dutiable base

In determining the base for the levy of tariff on imported goods, the Chinese customs adopts the practices of transacted price. Normally that is the CIF price, subject to the follow adjustments, including :

- (1) Commission borne by importer;
- (2) The container considered to be the integrated part of the imported goods;
- (3) Packaging charges, R & D expenses, design fee and related service charges borne by importer;
- (4) The royalty paid by the importer to the overseas supplier on the sale of goods after importation and the payment relating to the re-sale, disposal or use of the imported goods.

But excluding :

- (1) The cost of installation, testing, maintenance and technical service fees for imported machinery and equipment;
- (2) The inland freight charges and the insurance premium from port of import to final destination;
- (3) Import duty and internal taxes

In case the Chinese customs consider that the declared price of an imported good is obviously lower than that for the identical or similar product without any credible evidence, or that the normal price is manipulated by arrangements between the importer and the exporter, the Chinese customs may substitute the following valuation for the imported goods in the descending order :

當海關認為進口商申報的進口價格明顯低於相同或類似的進口貨物，而又不能提供證據時，或進出口雙方的特殊安排影響正常交易價格，則可順序按以下辦法估計商品完稅價格：

1. 出口國向中國銷售相同或類似貨物成交價格；
2. 按出口國成本加上利潤、運輸及保險費；
3. 國內市場批發價格倒扣法 (剔除稅款、運輸、保險費用等)；
4. 合理方法估價。

關稅及增值稅

中國的商品進口商應在收到海關繳款通知書15日內交稅。逾期則須每日繳交稅款萬分之五的滯納金。若超過3個月仍未付款，海關可採取強制措施，包括在納稅人存款帳戶扣除或將應稅貨物變賣。若在限期內有明顯轉移或藏匿應稅貨物或其他財產，海關可責令納稅人提供擔保，甚至採取財產保全措施。

進出口貨物稅率適用以海關受理申報當日實施的稅率。計算方式是：

| | | |
|---|---|---|
| 1 | 關稅=到岸價 × 稅率 CIF value × duty rate | 按進口價值徵稅 Duty is levied by the value of import |
| 2 | 關稅=進口數量 × 單位稅額 Import quantity × rate per unit | 按進口價值徵稅 Duty is levied by the quantity of import |

例如：從日本進口的唇膏到岸價是100元美金，化妝品類商品進口增值稅率是17%，消費稅率是30%，稅款計算如下：

| | | | |
|---|---|---|--|
| 1 | 關稅=到岸價 × 稅率 Duty=CIF value × duty rate | $(US\$100 \times 8.3) \times 14.2\% = \text{RMB}117.86$ | 最惠國稅率是14.2% Preferential tariff rate is 14.2% |
| 2 | 增值稅=(到岸價+關稅+消費稅) × 稅率 VAT=(CIF value+duty+CT) × VAT rate | $(830+117.86+406.23) \times 17\% = \text{RMB}230.20$ | |
| 3 | 關稅、增值稅、及消費稅 Import tariff, VAT and CT | $117.86+230.2+406.23 = \text{RMB}754.29$ | |

*消費稅按以下公式計算：
組成計稅價格=(CIF+關稅)/(1-消費稅率)
消費稅=組成計稅價格×消費稅率
 $(830+117.86)/(1-30\%) = 1,354.09$
 $1,354.09 \times 30\% = 406.23$

1. The transaction price of identical or similar goods in the exporting country;
2. The cost of goods in country of export plus profit, transportation and insurance expenses;
3. The wholesale price for the identical or similar goods in the domestic market, after deducting taxes, transport charges, and insurances;
4. Reasonable valuations for the imported goods.

Import tariff and VAT

Taxes are payable 15 days after receiving the customs' payment notice regarding the importation of goods into China. There will be a daily surcharge of RMB 5 per every RMB 10,000 on the amount of overdue taxes for late payment. In case the taxpayer fails to pay the duty and taxes within a period of 3 months, the customs can take tax enforcement measures against the taxpayer including deducting the duty and taxes from the taxpayer's account, or selling the dutiable goods and deducting the duty and taxes from the proceeds hereof. If the customs find that the taxpayer is obviously trying to transfer or hide the dutiable goods or other assets, the customs can order the taxpayer to put up third party guarantee for the duty and taxes or take tax preservation measures against the taxpayer.

The rate for the import and export tariff refers to that in force on the date the Chinese customs accept the declaration for goods. The import tariff is calculated as follows :

If the CIF value of a set of lipsticks from Japan is US\$100, importation of cosmetics is subject to VAT at 17% and Consumption tax (CT) at 30%, the taxes will be computed as follows :

*Computation of CT is as per following formula:-
Composite dutiable value = (CIF value + import tariff) / (1 - CT rate)
CT = composite dutiable value × CT rate
 $(830 + 117.86) / (1 - 30\%) = 1,354.09$
 $1,354.09 \times 30\% = 406.23$

降低關稅亦會降低增值稅及消費稅，反之亦然。

A reduction in import tariff will also reduce the amount of VAT payable and CT payable, vice versa.

出口退稅

如符合下列條件，出口商可申請退還部分或全部

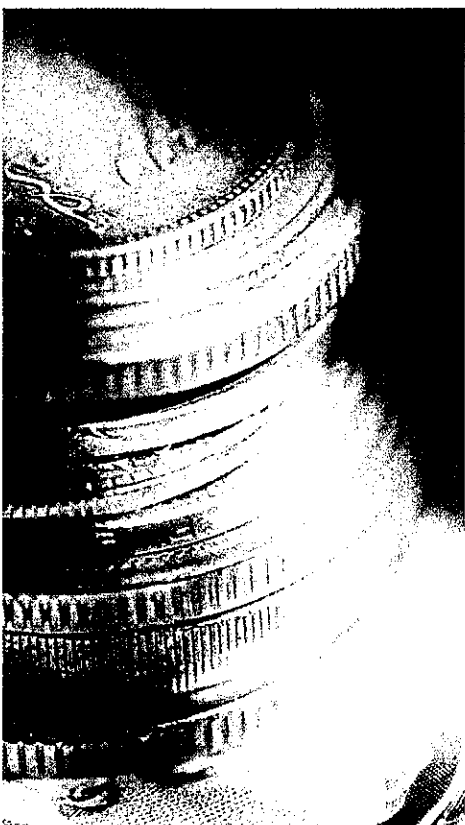
在國內採購出口貨物而支付的增值稅及消費稅：

1. 貨物屬於增值稅或消費稅條例的徵稅商品範圍；
2. 貨物的有關交易在財務上須為銷售貨物(非固定資產)處理；
3. 除付運到出口加工區外，貨物必須離開中國國境；
4. 出口商必須提供已完成出口收匯程序的證明。

稅款退還

在下列情況下，納稅人自繳稅日起1年內，可向海關申請退稅：

1. 已繳稅的進口貨物，因品質或規格原因原狀退貨複運出境。
2. 已繳出口關稅的出口貨物，因品質或規格原因原狀退貨複運進境，並已重新繳納因出口而退還的國內有關稅收。
3. 已繳出口關稅的貨物，因故未裝運出口申報退關。



VAT Export rebate

The VAT paid for the purchase of export goods in the Chinese market can be refunded in whole or in part, if the exporter can satisfy the following requirements :

1. The goods are subject to VAT or CT under the Chinese tax regulations;
2. The nature of the export transaction must be treated as sales, not the disposal of fixed assets, in the books of accounts for the exporter;
3. The goods must have actually left the country (except for goods that shipped to export processing zones);
4. The exporter has to produce evidence showing that the foreign exchange verification procedure governing the export collections has been completed.

Refund of tariff and taxes

The taxpayer can apply to the Chinese customs for a refund of duty and taxes within one year after payment of taxes upon the occurrence of the following :

1. Goods, in respect of which import tariff and taxes have been paid, are returned in original conditions, to overseas suppliers due to quality or specification reasons;
2. Goods, in respect of which export tariff have been paid and internal taxes are paid again in connection with VAT export rebates obtained previously, are returned in original conditions, to domestic exporters due to quality and specification reasons;
3. The application for withdrawal from customs release already given for export goods, in respect of which export duty has been paid;
4. The portion of duty and taxes arising from short shipment of import or export bulk cargoes, in respect of which duty and taxes have been paid, and the consignor, carrier or the insurance company has already made refund or paid compensation for the value of the goods;
5. The portion of duty and taxes arising from short shipment of goods due to damage, poor quality, off-specification, or other causes, in respect of which the consignor, carrier, or insurance company has already paid compensation for the value of the goods.

4. 散裝進出口貨物發生短裝並已徵稅放行的，如果該貨物的發貨人、承運人或保險公司已對短裝部分退還或者賠償相應貨款，納稅人未申請退還進口或出口短裝部分的相應稅款。
5. 進出口貨物因殘損、品質不良、規格不符原因，或發生其他引致貨物短少的情形，由進出口貨物的發貨人、承運人或保險公司賠償相應貨款，納稅人未申請退還賠償貨款部分的相應稅款。

關稅及國內稅減免

關稅及國內稅減免有兩種：法定及特定減免。

法定減免稅的貨物：

- 關稅在人民幣50元以下；
- 無商業價值的廣告品和貨樣；
- 原狀退回的進出口貨物；
- 結關前已損壞的貨物；
- 法律規定減免稅的貨物；
- 中國締結或參加國際條約規定減免稅的貨物。

Exemption and Reduction of Import Tariff and Internal Taxes

Exemption and reduction of import tariff and internal taxes can be divided into two types: statutory and special. Statutory exemption applies to the following goods:

- Goods with import tariff less than RMB 50;
- Advertising articles and samples of no commercial value;
- Imported or exported goods being returned in original conditions;
- Goods damaged prior to customs releases;
- Goods with tax reduction or exemption under the Chinese law;
- Goods covered by international treaties providing for tariff reductions and exemptions which China had entered into or acceded to.

Only the State Council has the power to grant special exemption and reduction to goods for specific purposes, specified enterprises and specified locations. Goods temporarily imported into China are exempted from duty and internal taxes. Goods qualified for special tax exemption or reduction are as follows:

- Reasonable quantity of goods imported by qualified institutions or schools that are used for purposes of scientific research and education and that are not capable of being produced domestically;
- Goods that are on the list of the encouraged category or restricted category B in the "Catalog of the Industry Guide for Foreign Investment" which involve the transfer of technology in the foreign investment project within the amount of total investment by foreign investment enterprises;
- Materials and components imported by foreign investment enterprises for use in the manufacturing of export products under import processing agreement, and capital equipment which is brought into China free of charge by the foreign party;





特定減免稅由國務院規定，範圍包括特定用途商品、企業及地區，暫時進口商品免徵關稅及國內稅。商品包括：

- 經國家批准從事科研的機構及學校所進口的合理數量非生產教學科研物品；
- 符合《外商投資產業指導目錄》中鼓勵類和限制乙類，並轉讓技術的外商投資項目，在總投資額內進口的自用設備；
- 加工貿易項目中進口或經加工後出口的原料或配件，以及外商不作價提供的設備；
- 對保稅區內與其他國家／地區運輸的商品進出境時不徵稅，根據法律保稅區屬於境內關外區域，但從保稅區外進入區內的貨物當作出口，貨物從保稅區離開後，可申請出口退稅。從保稅區內進入區外的貨物視作進口，需按章徵稅。

上述規定亦適用於在出口加工區與其他國家／地區運輸的貨物，在出口加工區內外交付的貨物按進口或出口辦理，但由區外進入區內的貨物即可辦理申請退稅，無須等貨物離境。

為參加展覽、電影攝製、體育及文藝公演、學術交流講座而需臨時入境而不超過6個月的商品，可申請免關稅及國內稅。但進口商需向海關提供商品等額稅款押金，在商品離境後可向海關申請發還按金。出

- Goods shipped between free trade zones (FTZ) and other countries are exempted from import tariff and taxes. The FTZs are excluded from the Chinese customs zones according to the Chinese laws. However, goods delivered to FTZ from non-FTZ area inside China are considered exports and these goods are eligible for VAT export rebates after the goods finally depart from Chinese territories. Likewise, goods delivered from FTZ to non-FTZ areas are considered imports and they are subject to customs duty and VAT.

The same exemption of tariff and VAT applies to the delivery of goods between export processing zones (EPZs) and other countries (or regions). Delivery of goods between EPZ and non-EPZ is treated import and export, except that goods delivered from non-EPZ to EPZ are eligible for VAT export rebates immediately, without having to wait for those goods to actually leave the Chinese territories.

Goods temporarily imported to China that are used for exhibitions, film production, sport events and entertainment shows, for a period not exceeding 6 months, are exempted from export tariff and internal taxes. However, the importer is required to place a refundable security deposit equal to the amount of the duty and taxes payable. The importer can apply to cancel the customs registration and get a refund after the goods are shipped out of China. 出

本文中英文原稿由陳國基先生提供。

The Chinese and English originals were contributed by Mr. Alfred K K Chan.